IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 735 OF 1997
WITH
CIVIL APPLICATION ST.NO. 6980 OF 1997

Nathu Maruti Baradi
since deceased, through his
legal representatives
1. Balaji Nathu Kharade & ors. ..... Appellants

versus

Sou Shantabai Narayan Tilekar .....respondent.

Ms. Gauri Godse advocate for the appellants
Shri Girish S. Godbole advocate for the respondent.

CORAM; V.R. KINGAONKAR, J.
DATED; 11TH JANUARY 2007

P.C.:

1. Heard counsel for the parties.

2. This second appeal is filed by the original plaintiff. The suit filed for declaration, injunction and specific performance of contract, was at the stage of hearing on interim application for injunction. The respondent filed her written say (W.S.), that was the reply to the interim application for injunction. In her reply, the respondent/defendant contended that there is total absence of cause of action for filing of the suit. The learned trial court came to the conclusion that the plaintiff failed to give particulars regarding concluded contract, which was

sought to be enforced, and there was total absence of the cause of action. The learned trial court held that the suit could not be entertained and the plaint had to be rejected under the provisions of Order VII Rule 11 of the Code of Civil Procedure. The plaint was accordingly rejected and the appeal carried to the District Court also met with the same fate. The judgment of the appellant court is being impugned herein.

3. The learned counsel Ms. Godse submits that the rejection of the plaint at the premature stage was unwarranted. She also submits that there was specific plea regarding the contract with the deceased Babu Bharadi. She further submits that the rejection of the plaint, without there being a written statement in pursuance to the summons was improper. She seeks to rely on certain observations in the case of **"Nishit M.Prabhu Verlekar Vs. Chandranath VinayakDhume and others" reported in AIR 1986 BOMBAY 46.** She contended that the reliance of the first appellate court on the observations in the case of **"T.Aravindandam Vs. T.V.Satyapal & another" reported in AIR 1977 S.C. 2421** is misplaced. She submits that there is nothing on record to show that the plaint reflected vexatious reasons. Hence she urged to admit the second appeal as substantial question of law is involved.

4. At the outset, it may be noted that the appellant vaguely pleaded that he wanted to purchase western half share of the land but due to his inability to raise the consideration amount, the sale deed was obtained by deceased Babu. He also vaguely pleaded that somewhere in 1969 he had paid an amount of Rs. 200/- to said Babu. He did not specify as to when was the contract made with the deceased Babu. There are no particulars about the place of contract, date of contract, consideration agreed between the parties and so on. There cannot be any duality of opinion regarding requirement of proper leading as enumerated under the provisions of Order VII Rule 11 of the CPC. In the absence of such pleading it cannot be said that the plaintiff had entered into a contract with deceased Babu for purchase of the said western half share. That apart, during the life time of said Babu, there was no single document executed in favour of the plaintiff nor there was exchange of written letters or any communication between them. Said Babu demised on 14-9-1974. The suit was filed in 1991. The plaintiff failed to explain such inordinate delay. Not only that there is absence of cause of action, but in the absence of proper pleadings, the suit appears to be barred by limitation. The plaintiff did not plead as to when the contract was refused to be performed by deceased Babu or the defendant.

5. Considering the vague and improper pleadings, the trial court as well as the appellant court found that there was no cause of action for filing of the suit. The findings of both the courts are based on sound reasoning. The observations in the case of "Nishit M.Prabhu" (supra) are not applicable to the facts of the present case. In that case, an application was filed raising objection regarding maintainability of the suit and the same was considered without calling upon the defendant to file written statement. Moreover, what the Division Bench has observed is the rejection of the suit under such circumstances, may amount to "impropriety". It does not render such order as illegal. In the present case, there were pleadings, may be in the form of written say filed by the defendant, in answer to the application for temporary injunction and as such the trial court had an occasion to consider the relevant aspects. The discretion used by the trial court does not appear to be arbitrary or perverse. Though there may not be an element of vaxaciousness yet, lodging of such plaint itself could not be taken cognizance ofby the trial court in absence of appropriate substractum, as regards presence of cause of action. In this view of the matter , I do not find any substance in the second appeal. No substantial question of law is involved and as such the second appeal stands dismissed. The Civil Application is also rejected.

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